

EXPLANATORY STATEMENT

Social Security (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) (FaCS) Principles 2005

Summary

The Social Security (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) (FaCS) Principles 2005 (the Principles) are made under subsection 9BA(5) of the *Social Security Act 1991* (the Act).

The purpose of these Principles is to specify the payment factor (PF), which is the denominator used in the formula in subsection 9BA(5).

Subsection 9BA(13) of the Act provides that the Principles constitute a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. This means that the Principles are a legislative instrument in accordance with paragraph 6(d) of the *Legislative Instruments Act 2003*.

Background

A market-linked income stream that meets the requirements of section 9BA of the Act will be classified as an “asset-test exempt income stream” for the purposes of the social security law.

To meet the definition of an “asset-test exempt income stream” in section 9BA of the Act, an income stream must pay an amount of income in each year that is equal to the amount worked out by the formula in subsection 9BA(5). The PF is the denominator in that formula.

Explanation of the Provisions

Clause 1 of the Principles states the name of the Principles and clause 2 sets out that the Principles are taken to have commenced on 20 September 2004.

Clause 3 provides definitions of terms used in the Principles.

Clause 4 provides various rules in regard to working out the appropriate PF for each year of the income stream’s term. The table at the end of clause 4 provides the relevant payment factors in regard to the number of whole years remaining in the term of the income stream. The PF is worked out in regard to the number of whole years remaining in the term of the income stream on 1 July of each financial year, except in the first year of the income stream’s term, where this is done on the day the income stream commences.

For the purposes of working out the number of whole years remaining in the term of the income stream and thereby ascertaining the correct PF to be applied in any given year, where an income stream commenced in the period 1 July to 31 December in any year, the remaining term of the income stream is rounded up to the nearest whole number. Where an income stream commenced in the period 1 January to 30 June in

any year, the remaining term of the income stream is rounded down to the nearest whole number.

Clause 4 also provides that for the purposes of the Act, the figure calculated by using the formula in subsection 9BA(5) should be rounded to the nearest \$10, or multiple of \$10.

Consultation

Consultation regarding this instrument was undertaken with the Department of Veterans' Affairs as that Department administers legislation which incorporates similar rules relating to the treatment of income streams as that provided by the Act. The Department of Employment and Workplace Relations and the Department of Education, Science and Training were also consulted to ensure a co-ordinated approach in respect of payments under the Act for which they now have responsibility.

Consultation was also undertaken with the Department of the Treasury, the Australian Prudential Regulatory Authority, the Association of Superannuation Funds of Australia, and the Investment and Financial Services Association

Retrospectivity

This instrument applies retrospectively from 20 September 2004 and is beneficial to customers.